

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Serial No.: 10/806,767 Appellant(s): Nishikawa et al. Filing Date: March 23, 2004 Title: MULTI-SOURCE PROGRAMMING GUIDE APPARATUS AND METHOD Examiner: Joshua D. Taylor Art Unit: 2426 Customer No.: 37123 Confirmation No.: 2440	<p style="text-align: center;">Certificate of Transmission/Mailing/Express Mailing:</p> <p>Facsimile Transmission number (571) 273-8300 or "Express Mail" mailing label number _____ if applicable.</p> <p>I hereby certify that this correspondence is being: [] facsimile transmitted to the USPTO BPAL under 37 C.F.R. § 1.8, [] electronically transmitted via the USPTO electronic filing system, under 37 C.F.R. § 1.6(a)(4), [] deposited with the United States Postal Service with sufficient postage as first class mail in an envelope, under 37 CFR § 1.8, or [] deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service, under 37 C.F.R. § 1.10, on the below-indicated date and is addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.</p> <p>Typed/Printed Name of Person Transmitting, Mailing, or Express-Mailing Correspondence: <u>May Kim DeHaan</u></p> <p>Signature: <u>May Kim DeHaan</u></p> <p>Date of Deposit: <u>September 2, 2010</u></p>
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APPEAL BRIEF
UNDER 35 U.S.C. § 143(A), 37 C.F.R. § 41.37

To the Board:

This document is an Appeal Brief in support of the Notice of Appeal, filed on July 2, 2010, under 35 U.S.C. § 143(A) and 37 C.F.R. § 41.37.

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I. REAL PARTY IN INTEREST

The real parties in interest are the Assignees of the subject matter in the above-referenced patent application, Sony Corporation, a Japanese corporation, 1-7-1 Konan, Minato-ku, Tokyo, 108-0075, Japan, and Sony Electronics, Inc., a Delaware corporation, 1 Sony Drive, Park Ridge, New Jersey 07656 (new address).

II. RELATED APPEALS AND INTERFERENCES

On information and belief, the following related appeals or interferences are pending: (1) U.S. Patent Application Serial No. 10/806,712 (Attorney Docket No. 81232 7114) for “AUTOMATIC CONTENT DISPLAY APPARATUS AND METHOD,” filed on March 23, 2004, and the Notice of Appeal being filed on July 2, 2010, BPAI Appeal No. (to be assigned) and (2) U.S. Patent Application Serial No. 10/806,832 (Attorney Docket No. 81205 7114) for “Filter Criteria and Results Display Apparatus and Method,” filed on March 23, 2004, and the Notice of Appeal being filed on July 1, 2009, BPAI Appeal No. 2010-006452.

III. STATUS OF CLAIMS

The present application has been originally filed with Claims 1-15 on March 23, 2004. A Response to a Non-Final Office Action has been filed on March 13, 2008, wherein the Claims 1, 5, 8, 9, 13, and 15 have been amended. An Amendment in a Response to a Final Office Action has been filed on September 2, 2008, wherein the Claims 1, 8, and 13 have been amended, and wherein Claims 18, 19 and 20 have been newly added.

A first Request for Continued Examination in response to an Advisory Action has been filed on October 2, 2008, wherein entry of the September 2, 2008, Amendment has been requested. An Amendment in a Response to a Non-Final office Action has been filed on March 2, 2009, wherein Claims 1, 8, and 13 have been amended. An Amendment in a Response to a Final Office Action has been filed on July 2, 2009, wherein the Claims have not been further amended.

A second Request for Continued Examination in response to an Advisory Action has been filed on August 19, 2009, with an Amendment, wherein Claims 1, 8, and 13 have been amended. An Amendment in a Response to a Non-Final office Action has been filed on January 25, 2010, wherein Claims 1, 4, 5, 8, and 13 have been amended. Claims 1-20 have been finally rejected in the Final Office Action, dated April 6, 2010. An Amendment in a Response to a Final Office Action has been filed on June 7, 2010, wherein Claims 1, 5, 7, 8, 9, 13, 18, 19, and 20 have been further amended after final rejection.

Accordingly, Claims 1-20, as reflected in the January 25, 2010, Amendment and in the July 2, 2010, Notice of Appeal, having been filed in response to the June 21, 2010, Advisory Action, are the subject of this Appeal. The Claims that are subject of this Appeal are attached hereto as Appendix A.

IV. STATUS OF AMENDMENTS

An Amendment in a Response to a Final Office Action has been filed on June 7, 2010, wherein Claims 1, 5, 7, 8, 9, 13, 18, 19, and 20 have been further amended after final rejection. However, the June 7, 2010, Amendment has not been entered as noted in the June 30, 2010, Advisory Action.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Claims 1, 8, and 13 are independent claims in this Appeal. The subject matter of independent Claims 1 and 9 relate to the Appellants' method of automatically displaying content to at least one user. The subject matter of independent Claim 13 relates to the Appellants' interactive automatic display system for at least one user.

Independent Claim 1 addresses a method of selecting content by way of a multi-source interactive programming guide apparatus (Specification, Para. 34), comprising the steps of: providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content (Specification, Para. 34), wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content (Specification, Paras. 28 and 34), and wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format (Specification, Para. 22 and 34); providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 18-26), the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 10, ll. 21-23), the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, l. 26; p. 10, ll. 22-23), wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display

comprising a plurality of integrated results (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 18-19; p. 10, ll. 15-16), the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 7-9; Related Application: Attorney Docket No. 81229/7114, U.S. Patent Application Serial No. 10/806,646, Specification, Paras. 13 and 31; Related Application: Attorney Docket No. 81205/7114, U.S. Patent Application Serial No. 10/806,832, Specification, Paras. 13 and 29); providing at least one selection criterion (Specification, Para. 36); applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content (Specification, Paras. 36, 39); displaying programming guide information comprising information regarding at least a portion of the resultant selection (Specification, Para. 39); supporting a programming guide navigation (Specification, Para. 42); reviewing and browsing the information regarding the at least one portion of the resultant selection (Specification, Para. 42); if selecting a particular item of the plurality of discrete selectable items, providing a selection response (Specification, Para. 41; Fig. 2, elements 25-27); and if not selecting a particular item of the plurality of discrete selectable items, returning to the supporting step (Specification, Para. 42; Fig. 2, elements 25 and 26). The method of independent Claim 1 is also generally illustrated in Figure 2-5. Claims 2-7, 16, and 18 ultimately depend from Claim 1 as their base claim.

Independent Claim 8 addresses an interactive multi-source programming guide apparatus (Specification, Para. 26), comprising: a data processing unit (Specification, Para. 26) comprising at least one element selected from a group consisting essentially of a fixed-purpose dedicated platform, a partially-programmable platform, a cable, and a satellite set-top box (Specification, Para. 27); a plurality of characterizing descriptors (Specification, Para. 23), each of which individually correspond to a plurality of discrete selectable items of audio/video content

(Specification, Paras. 23 and 28), wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content (Specification, Para. 35), and wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, a data format (Specification, Para. 22), and at least one selection criterion (Specification, Para. 23); at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 18-26), the at least one smart filter comprising an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 10, ll. 21-23), each at least one smart filter being customizable for each at least one user (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, l. 26; p. 10, ll. 22-23), wherein the at least one smart filter simultaneously considers content across a plurality of media, whereby a coordinated joint display, comprising a plurality of integrated results (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 18-19; p. 10, ll. 15-16), is provided, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria (Specification, Para. 31) from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 7-9; Related Application: Attorney Docket No. 81229/7114, U.S. Patent Application Serial No. 10/806,646, Specification, Paras. 13 and 31; Related Application: Attorney Docket No. 81205/7114, U.S. Patent Application Serial No. 10/806,832, Specification, Paras. 13 and 29); and a control circuitry (Specification, Para. 27) adapted to: apply the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete

selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content (Specification, Paras. 36, 39); display programming guide information comprising information regarding at least a portion of the resultant selection (Specification, Para. 39); and a support programming guide navigation (Specification, Para. 42), wherein the data processing unit utilizes the plurality of characterizing descriptors (Specification, Para. 34), the plurality of cascading filters (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 3, ll. 14-18), the control circuitry (Specification, Para. 27), and the support programming guide navigation (Specification, Para. 42). The method of independent Claim 8 is also generally illustrated in Figure 1. Claims 9-12 and 19 ultimately depend from Claim 8 as their base claim.

Independent Claim 13 addresses a method of providing an interactive multi-source programming guide apparatus (Specification, Para. 34), comprising the steps of: providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs (Specification, Para. 34), wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content (Specification, Para. 35), and wherein a first plurality of the discrete selectable audio/visual programs differ from a second plurality of the discrete selectable audio/visual programs with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format (Specification, Para. 22); providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 18-26), the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword (Priority Document: U.S. Provisional Patent Application Serial

No. 60/520,752, p. 10, ll. 21-23), the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, l. 26; p. 10, ll. 22-23), wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 18-19; p. 10, ll. 15-16), the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats (Priority Document: U.S. Provisional Patent Application Serial No. 60/520,752, p. 8, ll. 7-9; Related Application: Attorney Docket No. 81229/7114, U.S. Patent Application Serial No. 10/806,646, Specification, Paras. 13 and 31; Related Application: Attorney Docket No. 81205/7114, U.S. Patent Application Serial No. 10/806,832, Specification, Paras. 13 and 29); providing at least one selection criterion that corresponds to a given individual (Specification, Para. 25); applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs to provide a resultant selection of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs (Specification, Paras. 36, 39); displaying programming guide information comprising information regarding at least a portion of the resultant selection (Specification, Para. 39); and providing a support programming guide navigation (Specification, Para. 42). The method of independent Claim 13 is also generally illustrated in Figures 2-5. Claims 14, 15, 17, and 20 ultimately depend from Claim 13 as their base claim.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether Claim 8 is unpatentable, under 35 U.S.C. § 112, second paragraph, as lacking sufficient antecedent basis
- B. Whether Claims 1-20 are unpatentable, under 35 U.S.C. § 103(a), over Sie et al. (US 2003/0233656), in view of Fries et al. (US 2004/0078807), and in further view of McCoskey et al. (US 2003/0028889)
- C. Whether, in finally rejecting Claims 1-20, the Examiner has erred, as a matter of law, in failing to consider and treat the present application, having more than three (3) actions and a pendency of more than five (5) years, as “special,” under MPEP §§ 707.02 and 708.01

VII. ARGUMENT

A. Whether Claim 8 is unpatentable, under 35 U.S.C. § 112, second paragraph, as lacking sufficient antecedent basis

1. Specific Nature of the Rejection as to Issue A

Claim 8 stands rejected, under 35 U.S.C. § 112, second paragraph, on the grounds that it lacks antecedent basis for the term “content.” The Appellants respectfully traverse these grounds for rejection on this basis.

2. Analysis of the recitations in Claim 8 as to Issue A

Clearly, independent Claim 8, reciting “the content” in lines 8-130 has antecedent basis provided in the recitation of “a plurality of discrete selectable items of audio/video content” in preceding lines 6 and 7. The Appellants respectfully submit that “plurality of discrete selectable items of audio/video” need not be repeated in relation to any subsequent recitations of “the content” when no other type of “content” has been previously recited in the claim, i.e., “the content” clearly refers only to “the plurality of discrete selectable items of audio/video content.” As such, Claim 8 is believed to have sufficient antecedent basis.

3. Conclusion as to Issue A

Thus, the Appellants respectfully submit that Claim 8 is believed to overcome this ground for rejection on this basis. Therefore, the Appellants respectfully request that the ground for rejection of Claim 8 on this basis is reversed and that Claim 8 is passed to allowance in due course.

B. Whether Claims 1-8 and 15-20 are unpatentable, under 35 U.S.C. § 103(a), over Sie et al. (US 2003/0233656), in view of Fries et al. (US 2004/0078807), and in further view of McCoskey et al. (US 2003/0028889)

1. Specific Nature of the Rejection as to Issue B

Claims 1-20 have been rejected, under 35 U.S.C. § 103(a), as being unpatentable over Sie et al. (US 2003/0233656), in view of Fries et al. (US 2004/0078807), and in further view of McCoskey et al. (US 2003/0028889), on the grounds that Sie et al. disclose "... a method of selecting content by way of an interactive programming guide apparatus ...[.]" that Fries et al. disclose "... 2 or 3 programs for each of Cable TV, Sat TV, Local TV, and VoD TV, which constitutes a plurality of discrete selectable items which differ with respect to both a bearer medium ... and service provider ...[.]" and that McCoskey et al. disclose "... providing at least one smart filter" (April 6, 2010, Final Office Action, Section 5). The Appellants respectfully traverse these grounds for rejection on this basis.

2. Analysis of the patentable distinctions between the present invention and Sie et al. (US 2003/0233656), in view of Fries et al. (US 2004/0078807), and in further view of McCoskey et al. (US 2003/0028889) as to Issue B

The law, under 35 U.S.C. § 103, is well settled that, for a cited reference or a combination of references to render obvious a claimed invention, the combination of the claimed elements and limitations must be taught, suggested, motivated, or otherwise obviated by that cited reference or that combination of cited references, even under *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). See also *Ex parte Clapp*, 227 USPQ 972, 973 (Bd. Pat. App. & Inter. 1985); *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970); and *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966).

In particular, *KSR v. Teleflex* holds that the proper objective framework for such an obviousness inquiry is set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR*

International v. Teleflex, Inc. et al., Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and *the level of ordinary skill in the pertinent art* resolved." [Emphasis added.]

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 1, as amended on January 25, 2010, from Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889), are as follows:

- a. "providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content,"
- b. "wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content," and
- c. "wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;"
- d. "providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being

reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;”

- e. “providing at least one selection criterion;”
- f. “applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content;”
- g. “displaying programming guide information comprising information regarding at least a portion of the resultant selection;”
- h. “supporting a programming guide navigation;”
- i. “reviewing and browsing the information regarding the at least one portion of the resultant selection;”
- j. “if selecting a particular item of the plurality of discrete selectable items, providing a selection response;” and
- k. “if not selecting a particular item of the plurality of discrete selectable items, returning to the supporting step.” [Emphasis added.]

Accordingly, Claims 2-7, 16, and 18, subsuming the combination of elements and limitations of base Claim 1 by dependency, are also believed to be patentably distinct over Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 8, as amended on January 25, 2010, from Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889), are as follows:

- a. “a data processing unit comprising at least one element selected from a group consisting essentially of a fixed-purpose dedicated platform, a partially-programmable platform, a cable, and a satellite set-top box;”

- b. “a plurality of characterizing descriptors, each of which individually correspond to a plurality of discrete selectable items of audio/video content;”
- c. “wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content;” and
- d. “wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, a data format, and at least one selection criterion;”
- e. “at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter comprising an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, whereby a coordinated joint display, comprising a plurality of integrated results, is provided, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;” and
- f. “a control circuitry adapted to;”
- g. “apply the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content;”
- h. “display programming guide information comprising information regarding at least a portion of the resultant selection;” and

- i. “a support programming guide navigation,”
- j. **“wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation.”** [Emphasis added.]

Accordingly, Claims 9-12 and 19, subsuming the combination of elements and limitations of base Claim 8 by dependency, are also believed to be patentably distinct over Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889).

The combination of elements and limitations, *inter alia*, that patentably distinguish independent Claim 13, as amended on January 25, 2010, from Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889), are as follows:

- a. “providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs,”
- b. “wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content,” and
- c. “wherein a first plurality of the discrete selectable audio/visual programs differ from a second plurality of the discrete selectable audio/visual programs with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;”
- d. **“providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at**

least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;”

- e. “providing at least one selection criterion that corresponds to a given individual;”
- f. “applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs to provide a resultant selection of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs;”
- g. “displaying programming guide information comprising information regarding at least a portion of the resultant selection;” and
- h. “providing a support programming guide navigation.” [Emphasis added.]

Accordingly, Claims 14, 15, 17, and 20, subsuming the combination of elements and limitations of base Claim 13 by dependency, are also believed to be patentably distinct over Sie et al. (US 2003/0233656), even in view of Fries et al. (US 2004/0078807), and even in further view of McCoskey et al. (US 2003/0028889).

Analyzing the facts as to Claims 1-20 in relation to Issue B, the Examiner concedes that Sie et al. do not teach “a multi-source interactive programming guide apparatus, wherein the first plurality of discrete selectable items of audio/video content differ from the second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format” and that Sie et al. and that Fries et al. do not teach “providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced

suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, ... the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, ... wherein the at least one smart filter simultaneously considers content across a plurality of media” (April 6, 2010, Final Office Action, Section 5, pp. 5-6).

With respect to the primary cited reference, Sie merely discloses: “... generating a personalized menu promoting other video programs available from a video content delivery system is disclosed. The video content delivery system provides a plurality of channels of video content simultaneously. In one step, it is determined that a triggering event has occurred with a video content delivery conduit. First information about one or more users is gathered. The one or more users are associated with an account with the video content delivery system. Alternative video programs are determined and personalized for the one or more users based, at least in part, upon the first information. The context for the triggering event is analyzed to produce second information. A configuration of the personalized menu is determined based, at least in part, upon the second information. The personalized menu is formulated for presentation to the one or more users. The personalized menu comprises links to the alternative video programs[.]” (Abstract)

With respect to the secondary cited reference, Fries merely discloses: “... electronic program guides and multimedia presentation devices. One implementation, described herein, provides a unified access to multiple electronic program guides (EPGs) from multiple programming and guide data sources (e.g., local broadcast, satellite broadcast, DVR, VoD, etc.). With this implementation, multiple EPGs from a variety of sources are presented in a single common user interface (UI). Therefore, the television viewer may search/browse the EPG of all sources concurrently. The scope of the exemplary e-commerce facilitation is pointed out in the appending claims.” (Abstract)

With respect to the tertiary cited reference, McCoskey et al. actually discloses: “A system for searching, packaging and delivering content using an aggregator is described. The aggregator processes requests, searches, provides search results and acquires content. The

aggregator, operating in a communications network, includes a request and results processing server, a search engine server coupled to the request and results processing server and a content acquisition server coupled to the request and results processing server. A request and results processing server receives a request for content, the search engine server searches for the content and the content acquisition program acquires content for delivery to the user. The request and results processing server includes a search request processor that receives information related to a user's search request and provides the information to a search results form builder that creates an electronic search request. The search request may be augmented by using a content suggestion engine to add additional search terms and descriptions to the search request. The aggregator may also include a decoder that decodes program content and program metadata from remote sources for storage at the aggregator, and an encoder that encodes content metadata and programs for delivery to the user. The aggregator may also comprise one or more crawlers, such as a content crawler, to look for program content in one or more digital communications networks." (Abstract).

Noteworthy is that the newly cited reference, McCoskey et al., does not teach, suggest, or motivate, either expressly or implicitly, its aggregator is being even capable of performing a **simultaneous consideration of content across a plurality of media in a plurality of data formats**. McCoskey et al. merely disclose that the "aggregator may also comprise one or more crawlers, such as a content crawler, to look for program content in one or more digital communication networks" (Abstract). McCoskey et al. never disclose that these crawlers actually perform their functions simultaneously (Paras. 92 and 97), notwithstanding the Examiner's belief that a plurality of crawlers would somehow behave in a contemporaneous manner. McCoskey et al. never disclose that the aggregator comprises a "smart filter" per se anywhere in the reference.

Additionally, although McCoskey et al. teach a "content suggestion engine," nowhere does the reference ever teach, or even imply, that such "content suggestion engine" is, in any way, "enhanced" (Figs. 14a and 14b; Paras. 97 and 98) or that it in any way **searches and analyzes content for its unique nature as claimed in the present invention**. McCoskey et al. also merely teach the selection of programming in terms of "content format," not actual "data"

format. Although McCoskey et al. teach reformatting a searched piece of content (searched on other bases), McCoskey et al. do not teach, suggest, or motivate, any filter selection criteria based on a plurality of different sources and a plurality of different data formats in the manner of the present invention. Furthermore, the search criteria of McCoskey et al. do not comprise two or more of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content resulting in an ability to make a recommendation based on a **content nature uniqueness**.

In contrast to the cited art, the present invention involves the following salient features, *inter alia*: “providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats,” and “wherein the at least one smart filter providing step comprises simultaneously considering content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different formats” and “wherein the data processing unit utilizes the plurality of characterizing

descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation.” [Emphasis added.]

As such, the Appellants respectfully submit that the cited art does not teach, suggest, motivate, or otherwise obviate the combination of elements and limitations as respectively recited in herein amended independent Claims 1, 8, and 13 of the present application, wherein some of the combined salient features are indicated in boldface:

1. A method of selecting content by way of a multi-source interactive programming guide apparatus, comprising the steps of:
 - providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content,
 - wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content, and
 - wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;
 - providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;
 - providing at least one selection criterion;
 - applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content;
 - displaying programming guide information comprising information regarding at least a portion of the resultant selection;
 - supporting a programming guide navigation;
 - reviewing and browsing the information regarding the at least one portion of the resultant selection;
 - if selecting a particular item of the plurality of discrete selectable items, providing a selection response; and
 - if not selecting a particular item of the plurality of discrete selectable items, returning to the supporting step. [Emphasis added.]

8. An interactive multi-source programming guide apparatus, comprising:
- a data processing unit comprising at least one element selected from a group consisting essentially of a fixed-purpose dedicated platform, a partially-programmable platform, a cable, and a satellite set-top box;
 - a plurality of characterizing descriptors, each of which individually correspond to a plurality of discrete selectable items of audio/video content,
 - wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content, and
 - wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, a data format, and at least one selection criterion;
 - at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter comprising an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, whereby a coordinated joint display, comprising a plurality of integrated results, is provided, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats; and
 - a control circuitry adapted to:
 - apply the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content to provide a resultant selection of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content;
 - display programming guide information comprising information regarding at least a portion of the resultant selection; and
 - a support programming guide navigation,
 - wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation. [Emphasis added.]
13. A method of providing an interactive multi-source programming guide apparatus, comprising the steps of:
- providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs,
 - wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content, and
 - wherein a first plurality of the discrete selectable audio/visual programs differ from a second plurality of the discrete selectable audio/visual programs with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;

providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;

providing at least one selection criterion that corresponds to a given individual;
applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs to provide a resultant selection of the first plurality of the discrete selectable audio/visual programs and the second plurality of the discrete selectable audio/visual programs;

displaying programming guide information comprising information regarding at least a portion of the resultant selection; and

providing a support programming guide navigation. [Emphasis added.]

Accordingly, Claims 2-7, 9-12, and 14-20, subsuming the limitations of their respective base claims by dependency, are also believed to overcome the cited art.

In addition, the Appellants respectfully submit that the April 6, 2010, Final Office Action has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. Reiterating, the Appellants recognize that an obviousness rejection may be proper in certain instances in light of *KSR v. Teleflex, Inc., et al.*, 550 U.S. 398, 127 S.Ct. 1727, 82 U.S.P.Q.2d 1385 (2007). However, *KSR v. Teleflex* specifically holds that the proper objective framework for such an obviousness inquiry is still set forth in *Graham v. John Deere Co.*, 383 U.S. 1 (1966), (*KSR International v. Teleflex, Inc. et al.*, Slip Op 04-1350 at 17): "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved." [Emphasis added.]

Specifically, the Appellants respectfully submit that the Examiner has not properly ascertained the differences between the prior art and the claims at issue or resolved the level of ordinary skill in the pertinent art. For example, the Appellants note that a distinction between the tertiary reference, McCoskey et al., and presently claimed invention is that McCoskey et al.

merely disclose that the “aggregator may also comprise one or more crawlers, such as a content crawler, to look for program content in one or more digital communication networks,” as discussed, *supra*.

However, the present application claims the following salient features, *inter alia*: “providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats,” and “wherein the at least one smart filter providing step comprises simultaneously considering content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different formats” and “wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation.” [Emphasis added.] This being so, the present invention comprises at least one smart filter, comprising a plurality of cascading filters and an enhanced suggestion engine for simultaneously considering content across a plurality of media. The April 6, 2010, Final Office Action fails to explain how Sie et al.’s “personalized menu” may be modified to encompass the claimed features of “at least one smart filter[,]” “a plurality of cascading filters[,]” and “an enhanced suggestion engine[,]” *inter alia*, i.e., ascertained the differences between the prior art and the claims at issue. [Emphasis added.]

As such, the Appellants respectfully submit that the Examiner fails to resolve the level of ordinary skill in the art and has failed to show any evidence in the form of enabling details that one of ordinary skill would modify Sie et al. to encompass the claimed features of “**providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats**” and “**wherein the at least one smart filter providing step comprises simultaneously considering content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different formats**” and “**wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation**” as proposed in the April 6, 2010, Final Office Action, other than by a blanket statement. [Emphasis added.] As such, the Appellants respectfully submit that the Examiner has not sustained the rejection of the claims on the basis of obviousness, even under *KSR v. Teleflex*.

Further, the Appellants respectfully submit that the rejection on this basis is actually grounded in impermissible hindsight reconstruction by piecing together the cited references by using the Appellants' claimed invention as a roadmap. The Examiner has merely made a blanket statement that one of ordinary skill would combine the teachings of Sie et al. (US 2003/0233656), Fries et al. (US 2004/0078807), and McCoskey et al. (US 2003/0028889), without presenting any evidence thereof.

The relevant procedural section is MPEP § 2142 which provides that ".... In view of all factual information, the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." [Emphasis added.]

In the instant case, the Examiner has pieced together elements from the three cited references to arrive at the claimed invention. Where a claimed limitation has not been expressly or implicitly disclosed, e.g., "providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different

data formats,” “wherein the at least one smart filter providing step comprises simultaneously considering content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different formats” and “wherein the data processing unit utilizes the plurality of characterizing descriptors, the plurality of cascading filters, the control circuitry, and the support programming guide navigation,” the Examiner merely makes a blanket statement that such limitation is “disclosed” or obviated without proffering any evidence thereof or rationale therefore. [Emphasis added.]

In addition, the rule under MPEP § 707.07(g) provides for the avoidance of “Piecemeal Examination” as follows: “**Piecemeal examination should be avoided** as much as possible. The examiner ordinarily should reject each claim on all valid grounds available, **avoiding, however, undue multiplication of references.** (See MPEP § 904.03.)” [Emphasis added.] In the instant case, the Examiner has used a multiplicity of references in asserting these grounds for rejection on this basis.

3. Conclusion as to Issue B

Thus, the Appellants respectfully submit that Claims 1-20 are believed to overcome these grounds for rejection. Therefore, the Appellants respectfully request that these grounds for rejection on this basis are reversed and that Claims 1-20 are passed to allowance in due course.

- C. **Whether, in finally rejecting Claims 1-20, the Examiner has erred, as a matter of law, in failing to consider and treat the present application, having more than three (3) actions and a pendency of more than five (5) years, as “special,” under MPEP §§ 707.02 and 708.01**

Further, the Appellants respectfully submit that the present application has now been pending for over five years, i.e., **over six (6) years** as of the original filing date, **March 23, 2004**, of the present application. The relevant rules are as follows (MPEP §§ 707.02, 708.01):

707.02 Applications Up for Third Action and 5-Year Applications[R-2]

The supervisory patent examiners should impress their assistants with the fact that the shortest path to the final disposition of an application is by finding the best references on the first search and carefully applying them.

The supervisory patent examiners are expected to personally check on the pendency of every application which is up for the third or subsequent Office Action with a view to finally concluding its prosecution.

Any application that has been pending five years should be carefully studied by the supervisory patent examiner and every effort should be made to terminate its prosecution.

In order to accomplish this result, the application is to be considered “special” by the examiner.

708.01 List of Special Cases [R-2]

37 CFR 1.102 Advancement of examination.

The following is a list of special cases (those which are advanced out of turn for examination):

(A) Applications wherein the inventions are deemed of peculiar importance to some branch of the public service and when for that reason the head of some department of the Government requests immediate action and the *>Director of the USPTO< so orders (37 CFR 1.102).

(B) Applications made special as a result of a petition. (See MPEP § 708.02.)

Subject alone to diligent prosecution by the applicant, an application for patent that has once been made special and advanced out of turn for examination by reason of a ruling made in that particular case (by the Director of the USPTO or a Commissioner) will continue to be special throughout its entire course of prosecution in the U.S. Patent and Trademark Office, including appeal, if any, to the Board of Patent Appeals and Interferences.

(C) Applications for reissues, particularly those involved in stayed litigation (37 CFR 1.176).

(D) Applications remanded by an appellate tribunal for further action.

(E) An application, once taken up for action by an examiner according to its effective filing date, should be treated as special by an examiner, art unit or Technology Center to which it may subsequently be transferred; exemplary situations include new cases transferred as the result of a telephone election and cases transferred as the result of a timely reply to any official action.

(F) Applications which appear to interfere with other applications previously considered and found to be allowable, or which will be placed in interference with an unexpired patent or patents.

(G) Applications ready for allowance, or ready for allowance except as to formal matters.

(H) Applications which are in condition for final rejection.

(I) Applications pending more than 5 years, including those which, by relation to a prior United States application, have an effective pendency of more than 5 years. See MPEP § 707.02.

(J) Reexamination proceedings, MPEP § 2261.

Thus, the Appellants respectfully submit that, since the present application has now received **six (6) actions** on the merit and has been **pending for over six (6) years** as of the original filing date of the present application, the present application should have been be treated as “special” by the Examiner under MPEP §§ 707.02 and 708.01 and that examination of the present application should have been, and should be, advanced. Therefore, the Appellants respectfully request that the grounds for rejection of Claims 1-20 on the foregoing bases are reversed and that remaining Claims 1-20 are passed to allowance in due course.

D. CONCLUSION

Accordingly, the Appellants respectfully submit that Claims 1-20, as contained in Appendix "A" (Claims Appendix), are believed to be patentably distinct over the cited references and that the Claims either stand alone or fall individually. Therefore, reconsideration of the present application in light of the foregoing argument and the evidence presented in the Appendices is respectfully requested. Claims 1-20, as amended on January 25, 2010, are believed to be fully supported by the originally filed specification and are believed to be in allowable form. In view of the foregoing arguments, the Appellants respectfully request that the rejections of the pending claims are REVERSED.

Respectfully submitted,

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VIII. Claims Appendix (Appendix A)

1. (previously presented) A method of selecting content by way of a multi-source interactive programming guide apparatus, comprising the steps of:

providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content,

wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content, and

wherein a first plurality of the discrete selectable items of audio/video content differ from a second plurality of the discrete selectable items of audio/video content with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;

providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a plurality of different sources and a plurality of different data formats;

providing at least one selection criterion;

applying the at least one selection criterion with respect to the characterizing descriptors of the first plurality of the discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content to provide a resultant selection of

30 the first plurality of discrete selectable items of audio/video content and the second plurality of the discrete selectable items of audio/video content;

displaying programming guide information comprising information regarding at least a portion of the resultant selection;

supporting a programming guide navigation;

35 reviewing and browsing the information regarding the at least one portion of the resultant selection;

if selecting a particular item of the plurality of discrete selectable items, providing a selection response; and

if not selecting a particular item of the plurality of discrete selectable items, returning to
40 the supporting step.

2. (original) The method of claim 1 further comprising:

responding to a remote control by scrolling through the programming guide information comprising information regarding at least a portion of the resultant selection.

3. (original) The method of claim 1 further comprising:

detecting user selection of a particular one of the plurality of discrete selectable items of audio/visual content.

4. (previously presented) The method of claim 1 further comprising providing a user database, wherein providing at least one selection criterion further comprises using information from the user database to characterize the at least one selection criterion to be provided.

5. (previously presented) The method of claim 4 wherein using information from the user database to identify the at least one selection criterion to be provided comprises:

accessing information from the user database to discern preferences of a particular user;

accessing the characterizing descriptors as individually correspond to a plurality of

5 discrete selectable items of audio/video content; and

comparing the preferences of a particular user to the characterizing descriptors of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete

selectable items of audio/video content.

6. (original) The method of claim 4 further comprising:
responding to a remote control by selecting a particular one of the plurality of discrete
selectable items of audio/visual content.

7. (original) The method of claim 1 wherein providing at least one selection criterion
comprises:

supplying at least one user-defined keyword; and

matching the at least one user-defined keyword with at least one of the characterizing

5 descriptors as individually correspond to a plurality of discrete selectable items of audio/video
content.

8. (previously presented) An interactive multi-source programming guide apparatus,
comprising:

a data processing unit comprising at least one element selected from a group consisting
essentially of a fixed-purpose dedicated platform, a partially-programmable platform, a cable,
5 and a satellite set-top box;

a plurality of characterizing descriptors, each of which individually correspond to a
plurality of discrete selectable items of audio/video content,

wherein the plurality of characterizing descriptors comprises at least two elements
selected from a group consisting essentially of a programming network identifier, an indication
10 of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a
description of the content, information pertaining to the content, an indication of a bearer
medium, a sample of the content, a promotional sample of the content, a previously prepared
trailer, and a preview of the content, and

wherein a first plurality of the discrete selectable items of audio/video content differ from
15 a second plurality of the discrete selectable items of audio/video content with respect to at least
one parameter selected from a group consisting essentially of a bearer medium, a primary
transmission service provider, a data format, and at least one selection criterion;

at least one smart filter for facilitating determination of a particular one of the discrete

selectable items of data, the at least one smart filter comprising an enhanced suggestion engine
20 for making at least one recommendation based on at least one parameter selected from a group
consisting essentially of a content nature uniqueness, a viewer identification, and a keyword,
each at least one smart filter being customizable for each at least one user, wherein the at least
one smart filter simultaneously considers content across a plurality of media, whereby a
coordinated joint display, comprising a plurality of integrated results, is provided, the plurality of
25 integrated results comprising an aggregate pool of candidate viewing choices being reducible on
a basis of filter selection criteria from at least one element selected from a group consisting
essentially of a plurality of different sources and a plurality of different data formats; and

a control circuitry adapted to:

apply the at least one selection criterion with respect to the characterizing descriptors of
30 the first plurality of the discrete selectable items of audio/video content and the second plurality
of discrete selectable items of audio/video content to provide a resultant selection of the first
plurality of discrete selectable items of audio/video content and the second plurality of discrete
selectable items of audio/video content;

display programming guide information comprising information regarding at least a
35 portion of the resultant selection; and

a support programming guide navigation,

wherein the data processing unit utilizes the plurality of characterizing descriptors, the
plurality of cascading filters, the control circuitry, and the support programming guide
navigation.

9. (previously presented) The interactive programming guide of claim 8 wherein the control
circuitry further comprises filter means for comparing the at least one selection criterion with at
least some of the characterizing descriptors of the first plurality of discrete selectable items of
audio/video content and the second plurality of discrete selectable items of audio/video content
5 to provide the resultant selection.

10. (previously presented) The interactive programming guide of claim 8 wherein the at least
one selection criterion is based, at least in part, upon a preference of a present viewer of the
interactive programming guide.

11. (original) The interactive programming guide of claim 8 wherein the at least one selection criterion comprises a user-defined keyword.

12. (original) The interactive programming guide of claim 8 wherein the at least one selection criterion is retained in a database.

13. (previously presented) A method of providing an interactive multi-source programming guide apparatus, comprising the steps of:

providing access to a plurality of characterizing descriptors as individually correspond to a plurality of discrete selectable audio/visual programs,

wherein the plurality of characterizing descriptors comprises at least two elements selected from a group consisting essentially of a programming network identifier, an indication of source, a network call sign for a station, a broadcast starting time, a broadcast stopping time, a description of the content, information pertaining to the content, an indication of a bearer medium, a sample of the content, a promotional sample of the content, a previously prepared trailer, and a preview of the content, and

wherein a first plurality of the discrete selectable audio/visual programs differ from a second plurality of the discrete selectable audio/visual programs with respect to at least one parameter selected from a group consisting essentially of a bearer medium, a primary transmission service provider, and a data format;

providing at least one smart filter for facilitating determination of a particular one of the discrete selectable items of data, the at least one smart filter providing step comprising providing an enhanced suggestion engine for making at least one recommendation based on at least one parameter selected from a group consisting essentially of a content nature uniqueness, a viewer identification, and a keyword, the at least one smart filter providing step comprising providing each at least one smart filter being customizable for each at least one user, wherein the at least one smart filter simultaneously considers content across a plurality of media, thereby providing a coordinated joint display comprising a plurality of integrated results, the plurality of integrated results comprising an aggregate pool of candidate viewing choices being reducible on a basis of filter selection criteria from at least one element selected from a group consisting essentially of a

25 plurality of different sources and a plurality of different data formats;
providing at least one selection criterion that corresponds to a given individual;
applying the at least one selection criterion with respect to the characterizing descriptors
of the first plurality of the discrete selectable audio/visual programs and the second plurality of
the discrete selectable audio/visual programs to provide a resultant selection of the first plurality
30 of the discrete selectable audio/visual programs and the second plurality of the discrete selectable
audio/visual programs;
displaying programming guide information comprising information regarding at least a
portion of the resultant selection; and
providing a support programming guide navigation.

14. (original) The method of claim 13 wherein providing at least one selection criterion that
corresponds to a given individual further comprises ascertaining an identity of a present viewer.

15. (previously presented) The method of claim 14 wherein providing at least one selection
criterion that corresponds to a given individual further comprises using the identity to recall at
least one previously stored selection criterion.

16. (previously presented) The method of claim 1, wherein displaying programming guide
information further comprises displaying programming guide information comprising
information regarding at least a portion of the resultant selection, wherein the resultant selection
includes two or more discrete selectable items of audio/video content from at least one of the
5 first plurality of discrete selectable items of audio/video content and the second plurality of
discrete selectable items of audio/video content.

17. (previously presented) The method of claim 13, wherein displaying programming guide
information further comprises displaying programming guide information comprising
information regarding at least a portion of the resultant selection, wherein the resultant selection
includes two or more discrete selectable items of audio/video content from at least one of the
5 first plurality of discrete selectable audio/visual programs and the second plurality of discrete
selectable audio/visual programs.

18. (previously presented) The method of claim 1, further comprising:

responding to a remote control by scrolling through the programming guide information comprising information regarding at least a portion of the resultant selection;

detecting user selection of a particular one of the plurality of discrete selectable items of audio/visual content;

providing a user database, wherein providing at least one selection criterion further comprises using information from the user database to characterize the at least one selection criterion to be provided; and

responding to a remote control by selecting a particular one of the plurality of discrete selectable items of audio/visual content,

wherein using information from the user database to identify the at least one selection criterion to be provided comprises:

accessing information from the user database to discern preferences of a particular user;

accessing the characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content; and

comparing the preferences of a particular user to the characterizing descriptors of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content,

wherein providing at least one selection criterion comprises:

supplying at least one user-defined keyword; and

matching the at least one user-defined keyword with at least one of the characterizing descriptors as individually correspond to a plurality of discrete selectable items of audio/video content, and

wherein displaying programming guide information further comprises displaying programming guide information comprising information regarding at least a portion of the resultant selection, wherein the resultant selection includes two or more discrete selectable items of audio/video content from at least one of the first plurality of discrete selectable items of audio/video content and the second plurality of discrete selectable items of audio/video content.

19. (previously presented) The interactive programming guide of claim 8,
wherein the control circuitry further comprises filter means for comparing the at least one
selection criterion with at least some of the characterizing descriptors of the first plurality of
5 discrete selectable items of audio/video content and the second plurality of discrete selectable
items of audio/video content to provide the resultant selection,

wherein the at least one selection criterion is based, at least in part, upon a preference of a
present viewer of the interactive programming guide,

wherein the at least one selection criterion comprises a user-defined keyword, and

10 wherein the at least one selection criterion is retained in a database.

20. (previously presented) The method of claim 13,

wherein providing at least one selection criterion that corresponds to a given individual
further comprises ascertaining an identity of a present viewer,

wherein providing at least one selection criterion that corresponds to a given individual
5 further comprises using the identity to recall at least one previously stored selection criterion,
and

wherein displaying programming guide information further comprises displaying
programming guide information comprising information regarding at least a portion of the
resultant selection, wherein the resultant selection includes two or more discrete selectable items
10 of audio/video content from at least one of the first plurality of discrete selectable audio/visual
programs and the second plurality of discrete selectable audio/visual programs.

IX. Evidence Appendix (Appendix B)

None

X. Related Proceedings Appendix

On information and belief, no decision by a court or the Board has been rendered in any of the following related proceedings: (1) U.S. Patent Application Serial No. 10/806,712 (Attorney Docket No. 81232 7114) for “AUTOMATIC CONTENT DISPLAY APPARATUS AND METHOD,” filed on March 23, 2004, and the Notice of Appeal being filed on July 2, 2010, BPAI Appeal No. (to be assigned) and (2) U.S. Patent Application Serial No. 10/806,832 (Attorney Docket No. 81205 7114) for “Filter Criteria and Results Display Apparatus and Method,” filed on March 23, 2004, and the Notice of Appeal being filed on July 1, 2009, BPAI Appeal No. 2010-006452.